In The
Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., and Guardian Ad Litem, as Representative of Minor Children,

Respondents.

On Petition For A Writ Of Certiorari To The Alabama Supreme Court

BRIEF OF AMICI CURIAE FAMILY EQUALITY COUNCIL, COLAGE, AND THE CAMPAIGN FOR SOUTHERN EQUALITY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Katherine Keating
Counsel of Record
Chase Haslam
Jeremy Fancher
Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel. (415) 675-3400
katherine.keating@bryancave.com

William J. Hibbler
Daniel Lewkowicz
Bryan Cave LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Tel. (212) 541-2000

Counsel for Amici Curiae Family Equality Council, COLAGE, and The Campaign for Southern Equality

[Additional Counsel Listed On Inside Cover]

[illegible]

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. A CHILD'S RELATIONSHIP WITH PARENTS IS FUNDAMENTAL, AND THE LEGAL RELATIONSHIP BETWEEN A CHILD AND ADOPTIVE PARENTS IS CRITICAL	5
II. REFUSING TO RECOGNIZE THEIR LEGAL RELATIONSHIPS WITH PARENTS HARMS CHILDREN	11
III. THE ALABAMA DECISION INJURES CHILDREN, ERASING THEIR LEGAL RELATIONSHIPS WITH A PARENT, WITHOUT CONSIDERATION OF THE CHILDREN'S BEST INTERESTS	17
A. The Alabama Decision Eliminates the Finality and Security at the Heart of Adoptive Laws	18
B. Under the Alabama Decision, Parents Can No Longer Depend on Adoption to Ensure their Children Will Have the Legal Right to a Non-Biological Parent's Care and Support	21
CONCLUSION	25

TABLE OF AUTHORITIES

Page

CASES

Baker v. Baker, 276 Ga. 778 (2003) 19

Obergefell v. Hodges, 135 S. Ct. 2584 (2015) 21

Quilloin v. Walcott, 434 U.S. 246 (1978) 5

Santosky v. Kramer, 455 U.S. 745 (1982) 18

Steed v. Steed, 877 So. 2d 602 (Ala. Civ. App. 2003) 19

Troxel v. Granville, 530 U.S. 57 (2000) 19

STATUTES

Ala. Code § 12-15-319 19

Ala. Code § 26-10A-25 ..... 19, 20

Ala. Code § 26-10A-29 19

Ga. Code Ann. § 15-11-310 19

Ga. Code Ann. § 19-8-18(e) 19

Ga. Code Ann. § 19-8-19 17

OTHER AUTHORITIES

Statement from Lily Alberte to Family Equality Council (June 10, 2014) 6

Statement from Rosemary Caldwell Llewellyn to Family Equality Council (Nov. 20, 2015) 11

Statement from Jamie Doepel to Family Equality Council (Nov. 25, 2015) 13, 14, 17

TABLE OF AUTHORITIES – Continued

Page

Statement from Elliott Emfinger to Family Equality Council (Nov. 3, 2015) 11, 15, 18

Elliott Emfinger, "I Helped My Moms (Finally) Get Married!" SEVENTEEN (June/July 2015), *available at* http://www.seventeen.com/life/real-girl-stories/a31943/i-helped-my-moms-finally-get-married/ 12, 13

Statement from Anna Frackman to Family Equality Council (Nov. 19, 2015) 12

Gary J. Gates, LGBT Parenting in the United States, Williams Institute, UCLA School of Law (Feb. 2013) 21

Statement from Rianna Johnson-Levy to Family Equality Council (Feb. 20, 2015) 7, 10, 14

Brief of the Guardian Ad Litem, E.L. v. V.L., Ala. Case No. 1140595 (filed May 11, 2015) 20

Petition for Writ of Certiorari, V.L. v. E.L., Case No. 15-648 (filed Nov. 16, 2015) 8, 9

Reply Brief of Petitioner in Support of Application for Recall and Stay at 3-4, V.L. v. E.L., Case No. 15A522 (filed Dec. 1, 2015) 9

Statement from Kinsey Morrison to Family Equality Council (Feb. 27, 2015) 15

Statement from Kinsey Morrison to Family Equality Council (Dec. 12, 2015) 7

Statement from H.R.-E. to Family Equality Council (Nov. 18, 2015) 23, 24

TABLE OF AUTHORITIES – Continued

Page

Statement from C.R.-E. to Family Equality Council (Nov. 18, 2015) 25

Statement from Cari S. to Family Equality Council (Nov. 3, 2015) 15

Statement from K.S. to Family Equality Council (Nov. 2, 2015) 6, 12, 18

INTEREST OF AMICI CURIAE[1]

Amici Curiae are organizations dedicated to promoting equality among our country's diverse families, in particular those comprised of lesbian, gay, bisexual, or transgender parents and their children. Each of the Amici has heard from its constituents that legal protections for the parent-child relationship are critical to the security and stability of their families. In this brief, Amici offer the stories of children of same-sex couples to illustrate the importance of their relationships with their parents and to underscore the danger the Alabama Supreme Court decision poses to their families.

Family Equality Council is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing LGBT parents and their children. Family Equality Council works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers these children to speak out about their families, share their own stories and become advocates for family equality. Family Equality Council submits this

---

[1] Written consent to the filing of this brief has been granted by all parties and filed with the Clerk of the Court. All parties received timely notice of Amici's intent to file this brief. No counsel for a party authored this brief, in whole or in part, and no person other than Amici Curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

brief on behalf of all of the young people with whom it has worked.

COLAGE is the only national organization for and led by people with a lesbian, gay, bisexual, transgender, or queer parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats these families differently can be isolating and challenging for children. COLAGE was founded 25 years ago to support and empower children of same-sex couples and LGBTQ parents. Based on its direct experience in working with thousands of youth in these families over the past 25 years, COLAGE can attest to the critical importance of recognizing and respecting the relationships of same-sex couples and their adopted children on every level – socially, institutionally, politically and legally.

The Campaign for Southern Equality is an organization that promotes full equality in the lives of LGBT people and their families in the southern United States. The organization advocates for changes to state and federal law with the goal of ending the acute discrimination that LGBT people and their families often face in this region. The Campaign for Southern Equality submits this brief on behalf of all of its constituents, but in particular those children of same-sex couples whose families have been threatened by the Alabama Supreme Court's ruling.

SUMMARY OF ARGUMENT

Reading the Alabama Supreme Court's opinion, it would be easy to forget this case is about children.

This case asks whether an Alabama court can erase the legal relationship between a parent and adopted child because it disagrees with another state's application of its adoption statutes. At stake is whether children can rely on adoption to secure their legal relationships with their parents.

Ten years after their youngest child was born to E.L. and V.L., and eight years after E.L. consented to, and a Georgia court approved, V.L.'s adoption of their three children, the Alabama Supreme Court refused to recognize the adoption, eliminating the legal relationship between V.L. and her children in the state where they reside.

In her Petition, V.L. explains why the Alabama decision is wrong as a matter of law. In this brief, children raised by same-sex couples explain, in their own words, why the decision is also wrong as a matter of conscience and how it threatens families like theirs. This brief gives voice to those uniquely positioned to explain the importance of recognizing and protecting children's relationships with their adoptive parents and the harm the Alabama decision is likely to inflict on families in Alabama and elsewhere.

Every state handles adoption differently. This makes the finality, predictability, and stability guaranteed by our Constitution's full faith and credit

mandate critical in the adoption context. Otherwise, a child risks losing a legal parent simply by crossing state lines.

Accordingly, until September 18, 2015, it was settled that no state could second-guess another state's determination to grant an adoption. A child's adoptive parent in one state would be his or her parent in every other state. Up until now, legal relationships between parent and child – whether biological or adoptive – could be involuntarily severed in only the most specific of circumstances, after careful consideration by the courts of parental rights and the best interests of the child.

Under the new rule of law announced by the Alabama Supreme Court, this is no longer the case. Alabama's courts are now free to independently interpret a sister state's adoption statutes. If, in the judgment of the Alabama court, the sister court misapplied its own adoption laws, the legal relationship between parent and child ceases to exist.

This is what happened to V.L. and her children. But the impact of the Alabama decision reaches far beyond V.L.'s family. The Alabama decision was rendered in the context of second-parent adoptions, but *all* out-of-state adoptions are now open to the independent scrutiny of Alabama's courts. Alabama parents who adopted their children in any other state must now live in fear of a determination by Alabama courts that the adoptions were granted in error. And

if this Court allows the decision to stand, the problem will not necessarily be confined to Alabama.

Thousands of families who were protected by adoption are now in jeop rdy, no longer able to rely on a judgment establishing the legal relationship between parent and child. The impact this uncertainty has on children is immeasurable.

Amici offer the perspectives of children raised by same-sex couples, some of whom rely on adoption to protect their families and others who have suffered from the lack of a legal relationship with a parent. Their experiences will help the Court understand what the Alabama decision means and why this Court's review is urgently needed.

ARGUMENT

I. A CHILD'S RELATIONSHIP WITH PARENTS IS FUNDAMENTAL, AND THE LEGAL RELATIONSHIP BETWEEN A CHILD AND ADOPTIVE PARENTS IS CRITICAL

A child's relationship with his or her parents will often be the most important relationship in the child's life, both emotionally and practically. Parents create and shape much of the emotional and physical environment in which children live. Accordingly, the legal protections that secure the relationship of parent and child are of paramount importance. *See, e.g., Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship

between parent and child is constitutionally protected.").

The significance of the parent-child relationship does not depend on biology. Children raised by same-sex parents know this from their daily lives.

Ten-year-old K.S. describes life with his two mothers in Mobile, Alabama: "We play games, watch movies, go to the beach and have fun. My Mommo picks me up from school every day, and my Mommy makes the best fried chicken."[2]

Lily Alberts, a 23-year-old, describes the mothers who raised her in Tennessee as no different from any other parents:

> Just like any other kid, I had one parent who read me stories and tucked me in, and one who held my hand while we walked the dog. I had one parent who drove me to school, and one who made me brush my teeth.[3]

Similarly, 19-year-old Rianna Johnson-Levy, raised by two mothers in Michigan, explains:

---

[2] Statement from K.S. to Family Equality Council (Nov. 2, 2015). All statements cited in this brief are on file with Amicus Family Equality Council. The children quoted in this brief do not seek anonymity. Initials are used for minors pursuant to the Court's direction in the context of merits briefs that names of minor children "should not be included in either the paper or the electronic version of a filing." Court's Guidelines for Electronic Submission of Briefs on the Merits (Oct. 1, 2013).

[3] Statement from Lily Alberts to Family Equality Council (June 10, 2014).

> My non-biological mom has been such a constant force in my life that I cannot imagine life without her. She is the parent who picked me up from school every day, braided my hair, and still makes sure that I get moved into the dorms at school each year.[4]

Kinsey Morrison, also 19, says that people have often asked which of her two mothers is her "real mom" – a question Kinsey finds both offensive and misguided:

> A mom is not someone who shares your DNA. She is someone who feels like home. She is someone who keeps you safe. She is someone who makes you laugh.
>
> She will hold you when you cry and then encourage you to get back up. She will love you at your worst and help you become your best, and you'll know you were better because you were hers. That is what makes a real mom. And I am lucky – so lucky – to have had two.[5]

The law recognizes that the parent-child relationship is not limited by biology, providing for adoption to secure the relationship between child and non-biological parent. Over time, adoption has changed to meet the evolving needs of children,

---

[4] Statement from Rianna Johnson-Levy to Family Equality Council (Feb. 20, 2015).

[5] Statement from Kinsey Morrison to Family Equality Council (Dec. 12, 2015).

though the text of adoption statutes has not always kept up with the practices of many states' courts.

This is particularly true for second-parent adoptions, where a legally recognized parent and his or her partner establish a legal relationship between the second parent and child while keeping the other parent's rights intact. Guided by the overarching principle of serving the best interests of the child, courts in many states have construed adoption statutes to permit second-parent adoptions, even where the terms of a statute do not explicitly provide for them.

This was the case with the Georgia judgment granting V.L.'s adoption of E.L.'s three biological children – the children that both women had decided to conceive using assisted reproductive technology and then raised together from birth. Though Georgia's adoption statute provided for adoption only with the termination of existing parental rights, the Fulton County Superior Court decided that "[t]he adoption should be granted in the best interest of the children."[6]

Finding that V.L. "had functioned as an equal second parent to the children, since their birth" and that the "children relate to both [E.L.] and [V.L.] on an equal basis," the court concluded that:

---

[6] Petition for Writ of Certiorari at 5-7, *V.L. v. E.L.*, Case No. 15-648 (filed Nov. 16, 2015) (quoting App. 50a).

> The children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption. It would be contrary to the children's best interest and would adversely affect their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births.[7]

Thus, V.L.'s children were given the legal protections of a relationship with their second mother – protections that were never in question from 2007, when they were established, to 2015, when the Alabama Supreme Court issued the decision in this case. With that decision, V.L. ceased to be her children's legal parent in Alabama, where they reside.

The precise number of children adopted through second-parent adoptions is unknown but estimated in the hundreds of thousands.[8] For decades, second-parent adoption has been the primary way same-sex couples ensured that their children had secure legal relationships with both parents.

---

[7] *Id.*

[8] *See* Reply Brief of Petitioner in Support of Application for Recall and Stay at 3-4, *V.L. v. E.L.*, Case No. 15A522 (filed Dec. 1, 2015) (citing *Sharon S. v. Superior Court*, 73 P.3d 554, 568 (Cal. 2003)).

Second-parent adoption is what secured Rianna Johnson-Levy's relationship with her non-biological mother. The emotional implications of the adoption for Rianna and her family are profound:

> My adoption was done when I was very young, before I can remember, but there are photos of the day around my house. The judge who performed the ceremony is considered a hero in our house, in a way that few people are. She allowed my mother, who did not give birth to me but equally wanted me brought into the world, the opportunity to be a part of me.[9]

Rosemary Caldwell Llewellyn's family also protected itself through second-parent adoption. Rosemary and her twin brother were born in Peru and adopted by one of their fathers when they were infants. Back in the U.S., their other father adopted them as a second parent. Rosemary, now 25, explains that:

> Ever since then my two dads, my brother, and I have been a family not just in our hearts, but in the eyes of the law.
>
> I felt secure and comforted by the fact that if one of my dads were to die, or for whatever reason became unable to take care of my brother and me, our family would be legally

---

[9] Rianna Johnson-Levy, *supra* note 4.

> protected and we would still have a parent in our other father, our Papi.[10]

II. REFUSING TO RECOGNIZE THEIR LEGAL RELATIONSHIPS WITH PARENTS HARMS CHILDREN

Unless their parents obtained a second-parent adoption in another state, children raised by same-sex parents in Alabama and the many other states whose laws have precluded adoption by same-sex couples have had to live without critical parental protections. The lack of a legal relationship with a parent burdens children emotionally and exposes them to the risk of devastating consequences from the death or disabling of a parent or the dissolution of their parents' relationship.

As 18-year-old Elliott Emfinger, who was raised by two mothers in Birmingham, Alabama, explains, "I have lived most of my life – legally – as the child of one parent, my birth mother."[11] Lacking a relationship to her non-biological mother, whom she calls "Sibbie," was hard for Elliott:

> I remember thinking that if something bad happened to Mom, I probably wouldn't be able to continue living with Sibbie, and I

---

[10] Statement from Rosemary Caldwell Llewellyn to Family Equality Council (Nov. 20, 2015).

[11] Statement from Elliott Emfinger to Family Equality Council (Nov. 3, 2015).

> would have to completely uproot my life. That was terrifying.[12]

When Anna Frackman, now 25, grew up in Wisconsin, state law precluded her from having a legal relationship with both of the women who raised her:

> Officially I have only one parent. Families like mine deal with a different reality. We have the same childhood fears late at night for our loved ones: car accidents, job losses, dissolution of longtime relationships, but we also know that if and when terrible events happen, we are at risk of losing something else: each other.[13]

Though K.S. has always lived with both of the women who have raised him since birth, for nine of his ten years he has had a legal relationship only with his biological mother – a reality that dismayed him: "Both of my parents love me very much. It makes me sad to think that someone doesn't recognize my Mommo as my legal parent."[14]

Jamie Doepel, now 33, was raised in Oklahoma by both her biological mother and her second mother,

---

[12] Elliott Emfinger, "I Helped My Moms (Finally) Get Married!" SEVENTEEN (June/July 2015), *available at* http://www.seventeen.com/life/real-girl-stories/a31943/i-helped-my-moms-finally-get-married/.

[13] Statement from Anna Frackman to Family Equality Council (Nov. 19, 2015).

[14] K.S., *supra* note 2.

Elaine. The mother-daughter relationship between Jamie and Elaine was never recognized by law:

> I am now a wife and mother, and I cannot fathom the thought of not having legal rights to my children's well-being. The idea that if a dire situation arose, I would not be able to be with my children makes my heart ache in a way that I cannot describe.
>
> This is what my parents endured every single day. To know that if the birth parent were to pass away or need to leave the home, the non-birth parent would be left without any rights to the children they helped raise was the reality of our situation. This is a very heavy burden for parents and children alike to bear, and I felt this.[15]

The lack of a legal relationship with a parent also impacts children in more prosaic ways as the family goes about its day-to-day life. As Elliott remembers: "[W]hen I first started kindergarten, Sibbie wasn't allowed to sign me out of school. It was ridiculous – she's my *mom*."[16]

Jamie's experience was similar. "Elaine, my mother's partner of 20-plus years, was just as big a part of my life as my biological mother or anyone could have been. She raised my younger brother and

---

[15] Statement from Jamie Doepel to Family Equality Council (Nov. 25, 2015).

[16] Elliott Emfinger, *supra* note 12.

me as her very own." Nevertheless, Elaine "was never able to take me to the doctor. She was never able to sign my college forms. All of the mundane things couples deal with every day was a struggle for us."[17]

Rianna Johnson-Levy imagines what her childhood would have been like if adoption had not secured her non-biological mother's ability to care for her:

> My non-biological mom stayed at home while I was younger, so she was the one who brought me to my doctor's appointments, chaperoned my field trips, and picked me up when I was sick.
>
> The idea that my mom would not have been able to be legally attached to me is upsetting to me because I love her but also because I cannot imagine what my childhood would have been like if she had not been able to make choices regarding my health and well-being without approval from my other mother. It is inefficient and dangerous for a parent who holds real responsibilities for a child to not be able to legally uphold them.[18]

The practical implications of not having a legal relationship with a parent can arise suddenly and in situations that are already stressful or traumatic. The lack of a legal relationship between K.S. and his

---

[17] Jamie Doepel, *supra* note 15.

[18] Rianna Johnson-Levy, *supra* note 4.

non-biological mother, Cari, created problems for the family from the outset. K.S. was born with a heart condition and at just three months of age needed open-heart surgery. Because Cari did not have paperwork proving she was K.S.' parent, hospital officials would not permit her to assist with his care.[19]

Kinsey Morrison had a similar experience. When she was a week old, she had a life-threatening reaction to a vaccine. The Kentucky hospital where she was treated allowed only one of her mothers – the one with a biological relationship – to be with her. Her other mother had to wait in the hall.[20]

Elliott explains that the significance of the legal relationship goes beyond a child's right to be cared for and does not end at the age of majority:

> As a young child I worried what would happen to me if tragedy struck our family such as illness, death, or parental separation, that would separate me from [my non-biological mother] Sibbie, who had no legal rights to take care of me. Now that I am almost a legal adult, I worry that I will have no lawful rights to take care of Sibbie as she ages.[21]

---

[19] Statement from Cari S. to Family Equality Council (Nov. 3, 2015).

[20] Statement from Kinsey Morrison to Family Equality Council (Feb. 27, 2015).

[21] Elliott Emfinger, *supra* note 11.

Jamie experienced what Elliott fears. While Jamie's non-biological mother, Elaine, was away from home helping to care for an ailing sister, she died unexpectedly. Elaine's parents and siblings had not approved of her relationship with Jamie's mother and did not bother to inform Jamie's mother of Elaine's death. Because Jamie, her brother, and her mother were legal strangers to Elaine, no one was obligated to notify them. They found out Elaine had died only because the family's electricity account was in her name. Unlike Jamie and her mother, the utility company was informed of Elaine's death, and it shut off the power to their home. This is how Jamie learned she had lost her mother.

> Two days after Elaine was buried, my family found out that she was gone. She was my mother, and as her daughter, I believe I deserved the right to make those final arrangements.
>
> I had the right to put her in her favorite dress and make sure her makeup was done the way she would have wanted. It was my right to make sure her nails were polished in her favorite color and her rings, the ones my other mother gave to her, were cleaned and shining. It should have been my right to have a say in where she was laid to rest, but all these rights were denied to me because Elaine could not legally adopt me.
>
> In the coming weeks, I had to search rural cemetery after rural cemetery to finally find Elaine's grave, because not even knowing her

> final resting place is a hardship that comes with having no rights – rights of the parents to their children and rights of the children to their parents.[22]

III. THE ALABAMA DECISION INJURES CHILDREN, ERASING THEIR LEGAL RELATIONSHIPS WITH A PARENT, WITHOUT CONSIDERATION OF THE CHILDREN'S BEST INTERESTS

Adoption should eliminate the uncertainty, fear, and pain that Anna, K.S., Kinsey, Elliott, and Jamie describe. This is why families like V.L.'s and E.L.'s have worked so hard to secure second-parent adoptions. Under Georgia law, V.L.'s adoption of her children "create[d] the relationship of parent and child between" V.L. and the children, "as if [each child] were a child of biological issue of" V.L., Ga. Code Ann. § 19-8-19, and the Full Faith and Credit Clause has always meant that final adoption judgments must be respected throughout the country.

But adoptions cannot protect children if courts are free to treat them as if they never happened.

---

[22] Jamie Doepel, *supra* note 15.

A. The Alabama Decision Eliminates the Finality and Security at the Heart of Adoption Laws

For children, adoption means finality and security, a permanent guarantee of the parent-child relationship. Elliott, whose mothers have recently married, and whose non-biological mother plans to adopt her, explains:

> My adoption will finally complete our family circle and bring a peace of mind I was never previously able to experience. With the support of the law behind us, we will each truly know that we will always have one another no matter what happens.[23]

K.S., whose non-biological mother was finally able to adopt him several months ago, says of the adoption: "It was a happy day and I am really proud that my family is now protected."[24]

Until the Alabama decision, children were correct in believing that their adoption meant that the support of the law was behind them and that their families were protected. Once a legal relationship between parent and child exists, the law will not abide its termination without satisfaction of a heavy burden. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (rejecting "fair preponderance of the evidence" standard as insufficient to support termination of

---

[23] Elliott Emfinger, *supra* note 11.

[24] K.S., *supra* note 2.

parental rights); Ala. Code § 12-15-319 (standard for terminating parental rights); Ga. Code Ann. § 15-11-310 (grounds for terminating parental rights).

This is true whether the parent is biological or adoptive. *See, e.g.*, Ala. Code § 26-10A-29 ("After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation. . . ."); *Steed v. Steed*, 877 So. 2d 602, 605-606 (Ala. Civ. App. 2003) (father who had legally adopted daughter stood on equal footing with the biological mother in custody determination). Like many other states, both Georgia and Alabama recognize the importance of finality in adoption, barring virtually any challenge to an adoption after a specified passage of time. Ga. Code Ann. § 19-8-18(e) (even jurisdictional challenges precluded after six months); Ala. Code § 26-10A-25(d) (collateral attacks on final adoption decrees after one year permitted only in cases of fraud or adoptee kidnapping).

When courts do intervene in the custody and care of children, the governing principle is virtually always the best interests of the child. *See, e.g., Steed*, 877 So. 2d at 604 (in making custody determinations, "[t]he overall focus of the trial court's decision is the best interests and welfare of the children"); *Baker v. Baker*, 276 Ga. 778, 781 (2003) (requiring court to apply best interests of the child standard in custody dispute between biological mother and non-biological father); *Troxel v. Granville*, 530 U.S. 57, 99 (2000) (Kennedy, J., dissenting) ("[T]he best interests of the

child standard . . . has been recognized for many years as a basic tool of domestic relations law in visitation proceedings.").

Accordingly, children have been able to rely on adoption to mean that a court will not sanction their separation from a parent without giving the parental relationship due weight and determining that that separation will serve the child's interests. This is no longer true.

The Alabama decision bypassed these safeguards, erasing the legal relationship between V.L. and her adopted children without reference to the children's welfare.[25] Under Alabama's new rule, while courts must consider children's best interests when an adoptive relationship is created, Ala. Code § 26-10A-25(b)(6), they need not consider children's welfare when an adoptive relationship is erased.

---

[25] The Guardian Ad Litem appointed to represent the interests of V.L.'s children opposed E.L.'s efforts to void the adoption, telling the Alabama Supreme Court that doing so would "conflict[ ] with the children's best interests and the reality that they have known their whole lives." Brief of the Guardian Ad Litem at 3, *E.L. v. V.L.*, Ala. Case No. 1140595 (filed May 11, 2015).

B. Under the Alabama Decision, Parents Can No Longer Depend on Adoption to Ensure their Children Will Have the Legal Right to a Non-Biological Parent's Care and Support

By permitting courts to void adoptive relationships created in other states, the Alabama decision puts adoptive families at risk. Families parented by same-sex couples are more likely to be impacted than others both because they raise adopted children at higher rates than other parents and because of their need to secure legal recognition of the second parent in almost every instance.[26]

Unfortunately, the availability of marriage for same-sex couples following this Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), does not render the Alabama decision less significant. First, marriage and step-parent adoption is not a possibility for families where a parent has already died or the parents' relationship has already dissolved – the situation in which V.L. and her children find themselves. Second, the thousands of children who have been adopted via second-parent adoptions are left in doubt as to their legal relationships with their adoptive parents and what – if anything – can be

---

[26] Same-sex couples are four times more likely than their different-sex counterparts to be raising an adopted child. Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute, UCLA School of Law at 1 (Feb. 2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

done to secure them. The Alabama decision undermines adoption fundamentally, freeing courts from the constraints of the Full Faith and Credit Clause in the area of law where finality and stability is most needed – children's relationships with their parents. That more parents can now marry and adopt as stepparents does not render the uncertainty and risk created by the Alabama decision tolerable.

Parents like E.L. and V.L. have relied on second-parent adoptions to give their children the security of legal relationships with both parents. Until the Alabama decision, the Full Faith and Credit Clause prevented a parent from unilaterally erasing these protections by voiding the adoption years later in a state other than the adoptive state. For example, the lives of C.R.-E. and her sister H.R.-E. were disrupted when their parents' relationship ended, but the girls were ultimately protected by the legal relationships their parents had established for them years earlier.

Born a year apart to their mothers, Lara and Kim, C.R.-E. is the biological child of Kim and was adopted by Lara, and H.R.-E. is the biological child of Lara and was adopted by Kim. The children were born and adopted in Washington state, but when Lara and Kim ended their relationship several years later, the family was living in Florida. Kim cut off C.R.-E.'s contact with both Lara and H.R.-E.

Relying on the Washington judgment, Lara turned to the Florida courts for assistance in maintaining contact with her adopted daughter. As E.L.

has done in this case, C.R.-E.'s biological mother argued that Florida should not honor the sister-state adoption and should not recognize Lara as C.R.-E.'s legal parent. The trial court agreed, reasoning that Florida was not required to give full faith and credit to the Washington adoption because adoption by same-sex couples was contrary to Florida's public policy. Florida's District Court of Appeal reversed, ruling that the trial court was required to give the Washington adoption judgment full faith and credit, regardless of public policy.[27]

Confirming Lara's parental status took three years, during which time C.R.-E. was separated from both her adoptive mother and her sister. The experience was difficult for H.R.-E., who says, "I grew up with [C.], and it was hard to understand why the courts didn't see that we were family. I care about her so much. It would be so sad if I wasn't allowed to be close with her."[28]

Now 14, H.R.-E. is grateful for the appellate court decision that recognized her sister's adoption and enabled the girls to continue their relationship:

> I was glad that the courts eventually understood that we were sisters. I get excited to

---

[27] In light of the Court's directive to identify minors only by initials, Amici have not included a citation to the reported appellate decision, which includes the last names of both parents.

[28] Statement from H.R.-E. to Family Equality Council (Nov. 18, 2015).

> tell her stuff. There is a feeling of hope when I tell her stuff that I've done, that she will be proud. We are on the same team. We support each other, all the time.[29]

But the result could have been different under the Alabama decision. Like those of many other states, Washington's adoption statutes do not explicitly provide for or prohibit second-parent adoptions. Courts throughout the state grant them when it is in the child's best interest to do so. Applying the new Alabama rule, the Florida court could have independently analyzed Washington's adoption statutes. If it determined that C.R.-E.'s adoption by Lara had been granted contrary to the Florida court's view of Washington law, it could use the supposed resulting "jurisdictional" defect to avoid giving full faith and credit to the Washington adoption, ruling that Lara had, in fact, never been C.R.-E.'s parent.

As difficult and confusing as the separation from her sister and mother was for C.R.-E. at the time, the full impact of what she almost lost became clear to C.R.-E. only in the years that followed, when she experienced difficulties in her relationship with her biological mother. The difficulties escalated into a crisis. In severe emotional distress and on the verge of being abruptly withdrawn from the high school that had become a place of stability and support, C.R.-E. turned to her adoptive mother for help. Lara's

---

[29] *Id.*

status as a legal parent enabled her to work with school officials and take steps to ensure C.R.-E.'s safety and well-being. C.R.-E. was able to remain in school and credits Lara's intervention with giving her the space to begin repairing her relationship with her biological mother.

> If it hadn't been for the fact of my adoption, which made Lara a legal parent, I do not know where I'd be right now. . . . I was extremely depressed, and, for some time, I was even suicidal. [But] I had two legal parents, one of whom was ready and willing to do whatever it took to protect me.[30]

Giving Lara the ability to help her child when she needed it most is no doubt what both of C.R.-E.'s mothers had in mind when Lara adopted her infant daughter as a second parent.

CONCLUSION

Families come in all shapes and sizes, and not all children have two parents in their lives. But when a child does have two parents who have chosen to commit to his or her care, support, and well-being, the law should continue to protect the child's relationship with both of them.

---

[30] Statement from C.R.-E. to Family Equality Council (Nov. 18, 2015).

For children, adoption means security and permanence. This is what it should mean and what, until the Alabama decision, it always has meant. This Court should grant V.L.'s petition for writ of certiorari to restore that protection and fulfill the promise of secure relationships of children with their adoptive parents.

Respectfully submitted,

KATHERINE KEATING
Counsel of Record
CHASE HASLAM
JEREMY FANCHER
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel. (415) 675.3400
katherine.keating@
bryancave.com

WILLIAM J. HIBSHER
DANIEL LEWKOWICZ
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Tel. (212) 541-2000

Additional Counsel

EMILY HECHT-MCGOWAN
DENISE E. BROGAN-KATOR
FAMILY EQUALITY COUNCIL
1050 17th Street, NW
Suite 600
Washington, DC 20036-5517
Tel. (202) 496.1285

Counsel for Amici Curiae Family Equality Council, COLAGE, and The Campaign for Southern Equality